IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7572 of 2005

For Approval and Signature:

THE HON'BLE MR.JUSTICE SHARAD D.DAVE

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

CHANDRAKANT @ LALO AMRATLAL SONI - Petitioner(s)

Versus

THE STATE OF GUJRAT &3 - Respondent(s)

==========

Appearance :

MR H.S.MULIA for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1,2.

MR PD BHATE, AGP for Respondent No(s).: 3.

==========

CORAM :THE HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 20/06/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner detenu has challenged the detention order dated 17.2.2005 passed by the District Magistrate, Nadiad – District Kheda in exercise of the powers conferred upon him under sub-section (2) of Section 3 of the Gujarat Prevention Anti-social Activities Act, 1985 (“the Act” for short), as, the Detaining Authority found that the detenu is a “bootlegger” and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.
2. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference to two criminal cases which are filed under the provisions of the Bombay Prohibition Act. In the grounds of detention, the statements of certain witnesses have been recorded.
3. At the time of hearing of this petition, it is argued by the learned advocate for the petitioner that the last case was registered against the petitioner on 5.1.2005, yet the detention order is passed after a period of more than one month, as, it was passed on 17.2.2005. It is submitted that in order to cover up the delay, statements of so called secret witnesses are recorded by the authority. In support of his argument, learned advocate appearing for the petitioner has relied upon the decision of this Court in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, 1997(1) GLH 381 wherein this Court has observed in para 21 as under.:
4. It is submitted that it can be presumed that subjective satisfaction of the detaining authority is vitiated on the ground of delay in passing the detention order after the last incident and on this ground alone, the impugned order is required to be quashed and set aside.
5. On the other-hand, Mr.Bhate, learned AGP has tried to support the impugned detention order passed against the petitioner. No Affidavit-in-reply is filed on behalf of the respondents controverting the averments made in this petition. Normally, reply is required to be filed in such type of cases controverting the averments made in the petition, otherwise, it can be presumed that the averments made in the petition are correct. The averment regarding delay has been made in para 3(11) of the petition and the same has gone uncontroverted.
6. Considering the facts and circumstances of the case and considering the judgments referred to above, in my view, it is clear that there is a delay in passing the detention order from the date of the last criminal case registered against the petitioner. Under the circumstances, I have no option but to quash and set aside the detention order on the ground that there is a delay in passing the detention order after the last incident i.e. On 5.1.2005.

7.In view of what is stated above, the petition is allowed. The order of detention dated 17.2.2005 is quashed and set aside. The detenu Chandrakant @ Lalo Amratlal Soni is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly.

(SHARAD D DAVE, J)

srilatha